

### **REMARKS/ARGUMENTS**

Applicants have carefully reviewed the Office Action mailed April 13, 2009, prior to preparing this response. Currently claims 15-24 and 26-30 are pending in the application, wherein claims 15-24 and 26-30 have been rejected. Claims 15, 16 and 29 have been amended and claims 31 and 32 have been added with this paper. No new matter has been added. Favorable consideration of the above amendments and following remarks is respectfully requested.

#### **Rejections**

Claims 16-28 and 30 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Namely, it was indicated that “the direction” at line 6 of claim 16 lacks prior antecedent support, and “the inside face” at line 8 of claim 16 lacks prior antecedent support. Claim 16 has been appropriately amended with this response in an attempt to obviate the rejection. Withdrawal of the rejection is respectfully requested.

It is noted that claim 16 has been amended into independent form, including all the limitations of claim 15. As claim 16 was not the subject of a rejection based on prior art, it is believed that claim 16, and claims depending therefrom, are currently in condition for allowance.

Claims 15 and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Reiley et al. (U.S. Pub. No. 2003/0028250) in view of Zucherman et al. (U.S. Pat. No. 5,836,948). Applicants respectfully traverse this rejection.

Claim 15 has been amended to more specifically define the claimed longitudinal housing of the intervertebral implant. As currently claimed, the spacer comprises an extension having a first side and a second side, and a tab spaced from the extension such that a longitudinal housing formed in the bottom end face is defined between the second side of the extension and a side face of the tab facing the extension. The longitudinal housing extends orthogonal to the groove. Neither Reiley nor Zucherman appears to teach at least these limitations of claim 15.

Namely, Reiley, relied on in the rejection of claim 15 as teaching a longitudinal housing, does not disclose an extension and a tab spaced from the extension to define a longitudinal housing between the extension and the tab. Zucherman fails to remedy the shortcomings of Reiley.

For at least these reasons, a prima facie case of obviousness has not been established regarding claim 15. Claim 29 includes the particulars of the intervertebral implant of claim 15 and adds additional limitations as recited in the method of claim 29. For at least these reasons, claim 29 is also believed patentable over the cited references. Withdrawal of the rejection is respectfully requested.

#### **New Claims**

Claims 31 and 32, newly added, depend from claim 15 and add additional limitations. For at least the reasons stated above, these claims are also believed patentable over the cited prior art. Favorable consideration of these claims is respectfully requested.

#### **Conclusion**

Reexamination and reconsideration are respectfully requested. It is submitted that all pending claims are currently in condition for allowance. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at 612.677.9050.

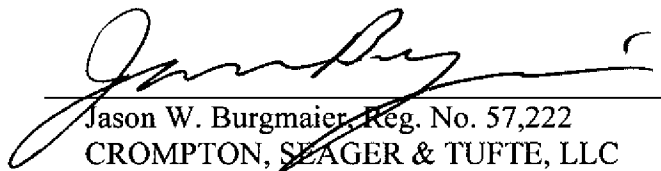
Respectfully submitted,

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By their attorney,

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